Supreme Court, U.S.
FILED
98 946 DEC 10 1998
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

EDWARD G. SHLIKAS,

Petitioner,

versus

WAKE FOREST UNIVERSITY et al..

On Petition For Writ Of Certiorari
To The United States Court of Appeals For
The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Edward G. Shlikas
6407 Martinique Road
Baltimore, Maryland 21237
410-866-1920

38 pp

QUESTIONS PRESENTED FOR REVIEW

1. In this diversity jurisdiction case, should the petitioner be allowed to exercise his state-created right to an interlocutory appeal, when several of the petitioner's substantial rights were violated by the District Court?

2. Should the petitioner's interlocutory appeal be allowed under the "Collateral Order Doctrine" ?

PARTIES TO THE PROCEEDING

WAKE FOREST UNIVERSITY

THOMAS K. HEARN, JR., in his capacity as President of Wake Forest University

ROBERT K. WALSH, in his capacity as Dean of Wake Forest University School of Law

MICHAEL J. PERRY

MARION W. BENFIELD, JR.

MICHAEL K. CURTIS

MIRIAM E. FELSENBURG

BUDDY O. H. HERRING

ALAN R. PALMITER

RALPH A. PEEPLES

PATRICIA J. ROBERTS

CHARLES P. ROSE, JR.

MARGARET H. TAYLOR

GEORGE K. WALKER

TABLE OF CONTENTS

QUESTIONS PRESENTED.....ii

PARTIES TO THE PROCEEDING.....iii

TABLE OF AUTHORITIES.....iv

ORDERS ENTERED IN THE CASE
BY THE COURTS.....1

BASIS OF JURISDICTION IN
THIS COURT.....3

CONSTITUTIONAL PROVISIONS, STATUTES, AND
RULES INVOLVED IN THE CASE.....4

STATEMENT OF THE CASE.....10

ARGUMENT FOR ALLOWING REVIEW ON
CERTIORARI.....14

APPENDIX.....21

TABLE OF AUTHORITIES

Byrd v. Blue Ridge Rural Electric Cooperative, Inc.,
356 U.S. 525, (1958).....16

Erie R. Co. v. Tompkins, 304 U.S.64, (1938).....16

Guaranty Trust Co. v. York, 326 U.S. 99, (1945).....16, 17

Quakenbush v. Allstate Ins. Co., 517 U.S. 706, (1996).....18

Ragan v. Merchants Transfer & Warehouse Co.,
337 U.S. 530, (1949).....16

ORDERS ENTERED IN THE CASE BY THE COURTS

March 24, 1998

DEFICIENCY ORDER that motion response by EDWARD G. SHLIKAS is deficient in that it exceeds the page limitation for a brief or reply brief without prior approval. Deficiency to be corrected by 4/8/98 for EDWARD G. SHLIKAS (signed by Magistrate Judge Russell A. Eliason).

April 23, 1998

DEFICIENCY ORDER that motion to Extend Time two weeks to re-file Responsive Brief by EDWARD G. SHLIKAS is deficient in that it is not double spaced; does not show good cause, consultation with and views of opposing parties; the caption did not identify the nature of the document; and is in the form of a letter, not a pleading. Deficiency to be corrected by 5/8/98 for EDWARD G. SHLIKAS (signed by Magistrate Judge Russell A. Eliason).

May 15, 1998

ORDER denying in part, granting in part, motion to Extend Time to allow plaintiff to re-file his amended response to the 12(b)(6) Motion to Dismiss. Plaintiff is given to and including fourteen days from the filing date of the Order to comply with this Court's March 24, 1998 deficiency order.
IT IS FURTHER ORDERED that plaintiff's motion to file a brief exceeding the 20-page limitation is denied, setting Status

Report deadline to 5/29/98 (signed by Magistrate Judge Russell A. Eliason).

July 29, 1998

ORDER granting Defendants-Appellees' motion to Dismiss Appeal and denying Plaintiff-Appellant's motion for a Stay as moot. Entered at the direction of Judge Wilkins with the concurrence of Judge Ervin and Senior Judge Hall (signed by Particia S. Connor, Clerk).

September 11, 1998

ORDER denying Plaintiff-Appellant's petition for rehearing and suggestion for rehearing in banc (signed by Patricia S. Connor, Clerk).

BASIS OF JURISDICTION IN THIS COURT

The petitioner seeks to have the Court review the Fourth Circuit Court of Appeals' July 29, 1998 order which granted the respondents motion to dismiss the petitioner's appeal and the September 11, 1998 order which denied the petition for rehearing. This Court has jurisdiction to review the orders of the court of appeals pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THIS CASE

UNITED STATES CONSTITUTION AMENDMENT I

Congress shall make no law... abridging the freedom of speech...or the right of the people...to petition the government for the redress of grievances.

LOCAL RULE 7.3(d), UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA LIMITATIONS ON LENGTH OF BRIEFS

Briefs in support of motions and responsive briefs are limited in length to 20 pages....

UNITED STATES CONSTITUTION AMENDMENT V

No person shall... be deprived of life, liberty, or property, without due process of law....

UNITED STATES CONSTITUTION AMENDMENT VI

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved....

UNITED STATES CONSTITUTION AMENDMENT XIV § 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE LAWS AS RULES OF DECISION,
28 U.S.C. § 1652
"RULES OF DECISION ACT"

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

NORTH CAROLINA GENERAL STATUTE § 7A-27
APPEALS OF RIGHT FROM
THE COURTS OF THE TRIAL DIVISIONS

(d) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which affects a substantial right.

(e) From any other order or judgment of the superior court from which an appeal is authorized by statute, appeal lies of right directly to the Court of Appeals.

NORTH CAROLINA GENERAL STATUTE § 1-277
APPEAL FROM SUPERIOR OR
DISTRICT COURT JUDGE

(a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed in any action or proceeding; or which in effect determines the action, and prevents a judgment from which an

appeal might be taken; or discontinues the action, or grants or refuses a new trial.

RULE MAKING POWER GENERALLY, 28 U.S.C. § 2071 (a)

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

RULES OF PROCEDURE AND EVIDENCE; POWER TO PRESCRIBE, 28 U.S.C. § 2072, "RULES ENABLING ACT"

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for purposes of appeal under section 1291 of this title.

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have

jurisdiction of appeals from all final decisions of the district courts of the United States....

28 U.S.C. § 636(b)(1)(A)

Notwithstanding any provision of law to the contrary—a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion... to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

28 U.S.C. § 636(c)(1)

Notwithstanding any provision of law to the contrary—upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter.... Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction....

28 U.S.C. § 636(c)(2)

If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of the court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall

include procedures to protect the voluntariness of the parties' consent.

F.R.C.P., RULE 73, MAGISTRATE JUDGES; TRIAL BY CONSENT AND APPEAL OPTIONS

(a) **Powers; Procedure.** When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. § 636(c)(7).

(b) **Consent.** When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under his subdivision.

F.R.C.P., RULE 83, RULES BY DISTRICT COURTS; JUDGE'S DIRECTIVES

(a) Local Rules

(1) ...A local rule shall be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075...

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

STATEMENT OF THE CASE

The petitioner is a law student in good-standing at Wake Forest University School of Law, who, as a result of the malicious, reckless, and negligent actions perpetrated by the respondents, has suffered substantial injuries and losses. In response to the unlawful actions perpetrated by the respondents during the petitioner's first two years of law school, the petitioner filed a complaint in The United States District Court for the Middle District of North Carolina (hereinafter "District Court") on November 12, 1997. The petitioner filed in federal court, under diversity jurisdiction, in a deliberate effort to avoid local bias against him.

In retaliation for the petitioner filing his complaint and in an effort to pressure the petitioner to dismiss his lawsuit against them, the administration at Wake Forest University began using various "tricks" and "strong-arm" tactics against him. When these tactics failed to have their desired result, the respondents summarily suspended the petitioner from attending classes, confiscated his law school loans, classified him as a trespasser, and repeatedly threatened to have him arrested by the local authorities. The petitioner responded by beginning a nonviolent hunger-strike, peacefully leaving the Wake Forest University campus, and returning to his hometown of Baltimore, Maryland.

At the same time that the Wake Forest University administration was "strong-arming" the petitioner, counsel for the respondents began to employ "hardball" litigation tactics against the petitioner. Respondents' counsel used the "hardball" tactics against the petitioner in an effort to "scare" the petitioner into dismissing his lawsuit against the respondents.

On December 3, 1997 and on several other occasions, respondents' counsel threatened to file sanctions against the petitioner if he pursued his case against the respondents. On March 11, 1998, respondents' counsel followed through with their threats and filed a motion for sanctions against the petitioner under Rule 11 of the Federal Rules of Civil Procedure.

The District Court has since held these potentially career ending Rule 11 sanctions over the petitioner's head for an unconscionable and unreasonable amount of time. For almost 9 months, since respondents' counsel filed the motion for sanctions against the petitioner, the District Court has refused to rule on the motion for sanctions. As a result, the petitioner's future practice in law has dangled in legal limbo for an unconscionable amount of time.

On March 11, 1998, after three days of working on his brief without sleep, the petitioner drove 800 miles to timely file his brief in opposition to the respondents' motion to dismiss for failure to state a claim upon which relief can be granted (hereinafter "motion to dismiss"). After the petitioner filed his brief, the District Court, in an unlawful effort to get the petitioner's lawsuit dismissed, began to act in a biased and prejudicial manner against the petitioner.

A magistrate judge was illegally assigned to the petitioner's case. The magistrate judge then began an unmerciful legal pounding of the petitioner, violating several of the petitioner's substantial rights.

The magistrate judge first began pounding the petitioner by striking the petitioner's brief in opposition to the respondents' motion to dismiss. The District Court then gave "sewer service" to the magistrate judge's March 24, 1998 deficiency order, by intentionally mailing the order to the

petitioner's wrong address. In a biased and prejudicial manner, the magistrate judge continued to strike and deny the petitioner's motions, and in the process, the petitioner was denied his Constitutional rights to due process and the freedom of speech.

The legal pounding continued until the petitioner realized that he was never going to get a fair trial and have his case judged by a jury, if he did not immediately appeal to a higher court for relief from the magistrate judge's onerous orders. The petitioner then filed an appeal with the Fourth Circuit Court of Appeals (hereinafter "Fourth Circuit") and sought relief from several violations of his substantial rights by the District Court.

Even on appeal, the District Court continued to act in a biased and prejudicial manner against the petitioner. The District Court, motivated by a desire to block the petitioner's appeal and avoid having its unlawful actions reviewed by a higher court, intentionally omitted a substantial amount of material information from the civil docket. The District Court also refused to rule on the petitioner's motion for a stay pending appeal.

The respondents then filed a motion to dismiss the petitioner's appeal. The petitioner filed a brief in opposition to the respondents' motion to dismiss appeal. The Fourth Circuit granted the respondents' motion to dismiss the appeal because the petitioner's appeal was interlocutory. The petitioner then filed a petition for a rehearing, relying on a state-created right to an interlocutory appeal when substantial rights have been affected by a lower court. The Fourth Circuit denied the petition for rehearing.

After the Fourth Circuit denied the petitioner's appeal, respondents' counsel began to play "hardball" with the

petitioner, again. In an unethical effort to bully the petitioner into dismissing his case against the respondents, respondents' counsel used the pending Rule 11 sanctions as a litigation weapon against the petitioner. On November 9, 1998, respondents' counsel filed a paper with the District Court in which respondents' counsel fervently pressed the District Court for Rule 11 sanctions against the petitioner, pressuring the petitioner to either dismiss his case or risk ending his legal career.

The petitioner now comes before the Supreme Court and asks the Court to grant a Writ Of Certiorari to review the actions of the District Court and the Fourth Circuit's decision to dismiss the petitioner's appeal.

ARGUMENT FOR ALLOWING REVIEW ON CERTIORARI

OVERVIEW

THE FOURTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

IN THIS DIVERSITY ACTION, THE FOURTH CIRCUIT COURT OF APPEALS HAS ALSO DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH NORTH CAROLINA STATE STATUTORY LAW AND NORTH CAROLINA STATE SUPREME COURT DECISIONS.

BY REFUSING TO HEAR THE PETITIONER'S APPEAL, THE FOURTH CIRCUIT COURT OF APPEALS HAS SANCTIONED A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA TO SUCH A DEGREE AS TO CALL FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWER.

INTRODUCTION

Erie R. Co. v. Tompkins, the subsequent related cases following Erie, the "Rules of Decision Act", and the "Rules Enabling Act" require a federal court, sitting in diversity, to use state law to make its decisions. In this case, the Fourth Circuit, sitting in diversity, has erred by refusing to recognize the petitioners state-created right to an interlocutory appeal. In the alternative, the Fourth Circuit should allow the petitioner's appeal under the "Collateral Order Doctrine".

As a result of the Fourth Circuit's decision to dismiss the petitioner's appeal, the Fourth Circuit has turned a blind eye to the petitioner's plight in the District Court and has consequently sanctioned the unlawful actions and omissions of the District Court. Without an immediate review and correction of the District Court's actions and omissions, the outcome of the this case will be significantly and detrimentally affected.

Without an immediate correction of District Court's actions, the petitioner will have virtually no chance of a fair judicial proceeding and no chance of having his case heard by a jury and judged on its merits. The Fourth Circuit's sanctioning of the District Court's unlawful behavior requires the exercise of the Supreme Court's supervisory power to level the playing field for the petitioner.

CASE LAW

> "Diversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias. The Framers of the Constitution, according to Marshall, entertained "apprehensions" lest

distant suitors be subjected to local bias in State courts, or, at least viewed with "indulgence the possible fears and apprehensions" of such suitors. Bank of the United States v. Deveaux, 5 Cranch 61, 87, 3 L.Ed. 38. And so Congress afforded out-of-state litigants another tribunal, not another body of law. The operation of a double system of conflicting laws in the same State is plainly hostile to the reign of law. Certainly, the fortuitous circumstance of residence out of a State of one of the parties to a litigation ought not give rise to discrimination against others equally concerned but locally resident. The source of substantive rights enforced by a federal court under diversity jurisdiction, it cannot be said to often, is the law of the States." Guaranty Trust Co. v. York, 326 U.S. 99, (1945).

"It was decided in Erie R. Co. v. Tompkins that the federal court in diversity cases must respect the definition of state-created rights and obligations by the state courts." Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 356 U.S. 525, (1958). "Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487, was premised on the theory that in diversity cases the rights enjoyed under local law should not vary because enforcement of those rights was sought in the federal court rather than in state court." Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530, (1949).

In Guaranty Trust Co. v. York, the Court wrote: "Here we are dealing with a right to recover derived not from the United States but from one of the States. When, because the plaintiff happens to be a non-resident, such a right is enforceable in a federal as well as in a State court, the forms and mode of enforcing the right may at times, naturally enough, vary because the two judicial systems are not identic. But since a federal court adjudicating a State-created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State, it cannot afford recovery if the right to recover is made unavailable by the State nor can it substantially affect the enforcement of the right as given by the State." Guaranty Trust Co. v. York, 326 U.S. 99, (1945).

"Erie R. Co. v. Tompkins was not an endeavor to formulate scientific legal terminology. It expressed a policy that touches vitally the proper distribution of judicial power between State and federal courts. In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of litigation, as it would be if tried in a State court." Id.

"The general rule is that a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of

district court error at any stage of the litigation may be ventilated . Accordingly, we have held that a decision is ordinarily considered final and appealable under § 1291 only if it ends litigation on the merits and leaves nothing for the court to do but execute the judgment. We have also recognized, however, a narrow class of collateral orders which do not meet this definition of finality, but which are nevertheless immediately appealable under § 1291 because they conclusively determine [a] disputed question that is completely separate from the merits of the action, is effectively unreviewable on appeal from final judgment, and is too important to be denied review." Quakenbush v. Allstate Ins. Co., 517 U.S. 706, (1996).

FEDERAL STATUTES

The "Rules of Decision Act" requires the "courts of the United States" to regard "the laws of the several states... as the rules of decision in civil actions... in cases where they apply." The "Rules Enabling Act," 28 U.S.C. § 2072 states that the federal rules of procedure "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2071 states that "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title."

CONCLUSION

In this case, the petitioner filed a civil action in federal court under diversity jurisdiction. The Fourth Circuit, bound to follow the precedents of Erie, Guaranty Trust, Ragan, and Byrd, and the statutory mandates of the "Rules of Decision Act" and the "Rules Enabling Act", should apply North Carolina State law to make its decisions in this case. North Carolina State law gives the petitioner the right to an interlocutory appeal when substantial rights have been affected in a lower court. During the judicial proceedings in the District Court, several of the petitioner's substantial rights were affected. Therefore, the petitioner has a right to an appeal.

The Fourth Circuit has erred by refusing to recognize the petitioner's State-created right to an appeal. The Fourth Circuit's error will substantially and detrimentally affect the outcome of this case. In order for a fair and just judicial proceeding to occur in this civil action, the petitioner asks the Supreme Court to grant a Writ of Certiorari and hear the petitioner's appeal.

In the alternative, since the District Court has also conclusively determined a disputed question that is completely separate from the merits of this action, which will be effectively unreviewable on appeal from final judgment, and is too important to be denied review, the petitioner asks the Court to grant a Writ of Certiorari and hear the petitioner's appeal under the "Collateral Order Doctrine".

Respectfully Submitted,

By: Edward G. Shlikas

Edward G. Shlikas
6407 Martinique Road
Baltimore, Maryland 21237
410-866-1920

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CASE NO. 1:97CV1188

Edward G. Shlikas
Plaintiff

v.

Filed: 10:00 AM
March 24, 1998
"D/R.W."

Wake Forest University, et. al.,
Defendant

ORDER

In this action, plaintiff has filed a document caption Revised Copy of Responsive Brief to Motion to Dismiss [11-1]. Upon review, the document is found to be deficient in the following respects:

Lacks an original signature. Rule 11, F.R.C.P.

Lacks a certificate of service. Rule 5, F.R.C.P.

Lacks the signature of a member of this court's bar. Local Rule 83.1(c). If the document was signed by a N.C. attorney who is not admitted to the Middle District of North Carolina, that attorney's appearance will not be entered in the case until admission to this court. Therefore, no future mailings from this court will be sent until admission.

Lacks the attorney's address, telephone number, or State Bar number. Local Rule 7.1(c).

Is not on letter size paper. Local Rule 7.1(a).

Is not double spaced. Local Rule 7.1(a).

Motion for an extension of time does not show good cause, consultation with the views of opposing parties. Local Rule 6.1(a).

Motion not accompanied by a supporting brief. local Rule 7.3(a).

X **Exceeds the page limitation for brief or reply brief without prior approval. Local Rule 7.3(d)**

Discovery motion does not contain statement of personal consultation. Local Rule 26.1(c).

Seeks relief for a state prisoner pursuant to 42 U.S.C. 1983 and is not on forms required by the court. Local Rule 7.1(e).

Does not comply with Federal Rule of Civil Procedure 41, in that an answer or a motion for summary judgment has been filed; thus, a dismissal may be taken only with leave of court or agreement of opposing counsel.

The document is hereby stricken without prejudice to the filing of a proper document(s) on or before April 8, 1998. Opposing parties need not respond to this document and the Court will not consider it. The response times of opposing parties to any corrected documents(s) will run from the date

of any corrected filing. In the event that the document is not corrected and refiled, no response is necessary.

SO ORDERED this 24 day of March, 1998.

"s/ Russell A. Eliason".
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

1:97CV001188

Edward G. Shlikas
Plaintiff

v.

Filed: 9:45 AM
April 23, 1998
"D/R.W."

Wake Forest University, et. al.,
Defendant

ORDER

In this action, **plaintiff**/defendant has filed a "Letter/Motion to extend time to refile Reply Brief". Upon review, the document is found to be deficient in the following respects:

Lacks an original signature. Rule 11, F.R.C.P.

Lacks a certificate of service. Rule 5, F.R.C.P.

Lacks the signature of a member of this court's bar. Local Rule 83.1(c). If the document was signed by a N.C. attorney who is not admitted to the Middle District of North Carolina, that attorney's appearance will not be entered in the case until admission to this court. Therefore, no future mailings from this court will be sent until admission.

Lacks the attorney's address, telephone number, or State Bar number. Local Rule 7.1(c).

Is not on letter size paper. Local Rule 7.1(a).

"*XX*"* Is not double spaced. Local Rule 7.1(a).

"*XX*"* Motion for an extension of time does not show good cause, consultation with the views of opposing parties. Local Rule 6.1(a).

Motion not accompanied by a supporting brief. local Rule 7.3(a).

Exceeds the page limitation for brief or reply brief without prior approval. Local Rule 7.3(d)

Discovery motion does not contain statement of personal consultation. Local Rule 26.1(c).

Seeks relief for a state prisoner pursuant to 42 U.S.C. 1983 and is not on forms required by the court. Local Rule 7.1(e).

Does not comply with Federal Rule of Civil Procedure 41, in that an answer or a motion for summary judgment has been filed; thus, a dismissal may be taken only with leave of court or agreement of opposing counsel.

XX Caption does not identify the nature of the document. Fed. R. Civ. P. 7(b)(2) & 10(a) ***"and is in the form of a letter, not a pleading"****

Italicized words were handwritten

The document is hereby stricken without prejudice to the filing of a proper document(s) on or before "*5/8/98*". Opposing parties need not respond to this document and the

Court will not consider it. The response times of opposing parties to any corrected documents(s) will run from the date of any corrected filing. In the event that the document is not corrected an refiled, no response is necessary.

SO ORDERED this 23 day of April, 1998.

"s/ Russell A. Eliason".
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

1:97CV01188

Edward G. Shlikas
Plaintiff

v.

Filed: 9:45 AM
April 23, 1998
"D/W.W."

Wake Forest University, et. al.,
Defendant

ORDER

Plaintiff has filed a motion entitled, "Motion for an Extension of Time to Perform an Act." Previously, the Court had stricken plaintiff's response brief to defendants' motion to dismiss the complaint because it exceeded the 20-page limitation. Approximately one month later, on April 23, 1998, the Court entered another deficiency order striking a letter plaintiff sent to the Clerk requesting an extension of time to file a new response brief. This letter was not in proper motion form.

Now, plaintiff has filed the instant motion for a two-week extension to file his brief beginning the day he actually receives service of the Court's decision. He also requests that his brief be allowed to extend beyond twenty pages because he has such a large amount of relevant case law and facts to support his claims that he wants to include them in his amended response. Defendants do not oppose plaintiff being given time to refile his brief but do oppose extension of the 20-page limitation.

The Court finds plaintiff has failed to show good cause for being given an extension of time to comply with this Court's March 24, 1998 deficiency order to file a brief within the page limitation covered by this Court's Local Rules. Plaintiff takes the viewpoint that he notified this Court of his address change and took: "All necessary, reasonable, and prudent steps to insure the proper delivery of the plaintiff's mail, via the U.S. Postal Service, to his correct address...." In plaintiff's view, all necessary, reasonable, and prudent steps meant that he submitted an address change to the Post Office and that he sent letter writings to the Court he would use his new address on the return address portions of letters, envelopes, or underneath his signature.

Plaintiff obviously is under the mistaken impression that the deputy clerk's have nothing to do but comb all pleadings and correspondence to see whether the address listed on a return envelope or underneath a litigant's signature matches the address given when appearance was entered. Plaintiff is informed that if he wishes to give notice of a change of address, he must be open, direct and forthright about it. He should have sent a letter to the Clerk of Court informing the Clerk and the other parties of his change of address. Consequently, the Court finds plaintiff fails to show good cause for being given an extension of time. It was plaintiff's failure to notify this Court of his change of address which led to his problems. Notwithstanding, the Court had discretion in this matter which it will exercise. It is noted that defendants do not oppose this motion. Therefore, the Court will grant plaintiff's motion for an extension of time. [1]

The Court will give plaintiff two weeks from the filing date of this Order to submit a proper brief as required by this Court's March 24, 1998 deficiency order. Plaintiff's request to exceed the 20-page limitation is denied. He claims that he has a large amount of relevant case law and facts. This fails

to show good cause. For one thing, the facts which the court will review will be in his complaint. He may not supplement his complaint through a brief. With respect to case law, he fails to show why his case in any different from any other case before the Court.

IT IS THEREFORE ORDERED that plaintiff's "Motion for an Extension of Time to Perform an Act" (docket no. 18) is granted in part and denied in part and he is given to and including fourteen days from the filing date of this Order to comply with this Court's March 24, 1998 deficiency order.

IT IS FURTHER ORDERED that plaintiff's motion to file a brief exceeding the 20-page limitation (docket no. 18) is denied.

"s/ Russell A. Eliason".
United States Magistrate Judge

May 15, 1998

[1]In granting this motion, the Court must relieve plaintiff of another misapprehension on his part. This Court does not set times in its orders by such unverifiable events as when a party claims to have actually received service of the Court's decisions. Rather, it must set fixed dates for compliance. It is up to plaintiff to not only check his mail, but the status of his case periodically to make sure that he receives proper mailings.

FILED: July 29, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1789
(CA-97-1188-1)

EDWARD G. SHLIKAS,

Plaintiff-Appellant,

versus

WAKE FOREST UNIVERSITY; ROBERT K. WALSH, in his capacity as Dean of Wake Forest School of Law; MICHAEL J. PERRY; MARION W. BENFIELD, JR.; MICHAEL K. CURTIS; MIRIAM E. FELSENBURG; BUDDY O. H. HERRING; ALAN R. PALMITER; RALPH A. PEEPLES; PATRICIA J. ROBERTS; CHARLES P. ROSE, JR.; MARGARET H. TAYLOR; GEORGE K. WALKER,

Defendants-Appellees.

ORDER

Appellee filed a motion to dismiss appeal as interlocutory and appellant has filed a brief in opposition to

the motion. Appellant has filed a motion for stay pending appeal.

The Court grants the motion to dismiss and denies the motion for stay as moot.

Entered at the direction of Judge Wilkins with the concurrence of Judge Ervin and Senior Judge Hall.

For the Court

"s/ Patricia S. Connor"
/s/ Patricia S. Connor

Clerk

FILED: September 11, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1789
(CA-97-1188-1)

EDWARD G. SHLIKAS,

Plaintiff-Appellant,

versus

WAKE FOREST UNIVERSITY; ROBERT K. WALSH, in his capacity as Dean of Wake Forest School of Law; MICHAEL J. PERRY; MARION W. BENFIELD, JR.; MICHAEL K. CURTIS; MIRIAM E. FELSENBURG; BUDDY O. H. HERRING; ALAN R. PALMITER; RALPH A. PEEPLES; PATRICIA J. ROBERTS; CHARLES P. ROSE, JR.; MARGARET H. TAYLOR; GEORGE K. WALKER,

Defendants-Appellees.

On Petition for Rehearing
with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor
CLERK